MOHANDAS MUKUNDAN A

v.

JABATAN PERKHIDMATAN AWAM & ANOR

HIGH COURT MALAYA, KUALA LUMPUR B
PRASAD SANDOSHAM ABRAHAM JC
[SUIT NO: S-21-247-2006]
28 JANUARY 2010

ADMINISTRATIVE LAW: *Public servants - Pensioner - Overhaul structure of civil service - Regrading of plaintiff's post - Whether degradability in terms of status - Whether defendants entitled in law to make adjustment in plaintiff's grade and pension entitlement after his retirement - Whether court in position to emplace plaintiff in his post as Setiausaha Sulit Division 1 for purposes of future entitlements - Federal Constitution, art. 132(2)* C D

The plaintiff commenced work with the Government of Malaysia as a stenographer on 16 March 1959. In 1978, the plaintiff joined the Ministry of Labour and Manpower in the newly designated appointment of Setiausaha Sulit to the Honourable Deputy Minister of Labour and Manpower and carried that post until he retired on 17 December 1990. The plaintiff's last drawn salary was RM2,350 and the grade (Kod Gaji) was A24, Division One. The position of the plaintiff's appointment as Setiausaha Sulit, was subsequently governed by Surat Pekeliling Bil. 10/1983, and he would be entitled to the pay and perks the A24 grade carried. The coming into effect of the "Pekeliling Perkhidmatan Bil. 9 Tahun 1991" sought to implement Perlaksanaan Sistem Saraan Baru Berdasarkan Laporan Jawatankuasa Khas Kabinet Mengenai Gaji Sektor Awam 1991 resulted in a massive overhaul of the structure of civil service. The effect of this circular as far as the plaintiff was concerned, was that Grade A24 was scrapped and the nearest grade in terms of pay and benefits under SSB was N4. Subsequently, Pekeliling Perkhidmatan Bil 4 of 2002 came into effect on 1 November 2002, which was essentially a review of the SSB. According to the plaintiff, despite these circulars coming into effect after the plaintiff's retirement, his grade was now N36 which under the existing salary scheme placed the plaintiff had he been in service in the support group of the civil E F G H I

A service. His last drawn salary, however, remained. It was the plaintiff's stand that the effect of the SSB and 2002 circulars ('service circulars') could not have any effect on the plaintiff and were therefore void as they only came into force after the plaintiff's retirement. The regrading of the post of Setiausaha Sulit had not
B only caused the plaintiff to suffer financially but the plaintiff was now downgraded to support category when the plaintiff should have been in the Professional and Management category of the civil service. The plaintiff claimed there was an element of degradability in terms of his status. The plaintiff applied for, *inter alia*,
C declarations that the service circulars had no effect or application as against the plaintiff and that he be emplaced in his post as Setiausaha Sulit Division 1 for the purposes of his entitlements. The defendants, on the other hand, argued that the orders sought by the plaintiff if granted would cost the government dearly and the
D plaintiff would have to be paid benefits based on a grade that no longer existed.

Held (dismissing plaintiff's application):

E **(1)** Bearing in mind art. 132(2) of the Federal Constitution, the defendants were entitled in law to make the adjustment in the grade of the plaintiff after his retirement to N36 and adjust the plaintiff's pension entitlement accordingly (*Badrul Ahmad & Ors v. Government of Malaysia & Ors*). With regards to readjustment
F of pay scale and grades, the court would not usurp the position of the defendants in making such policy decision. (paras 17, 18, 19 & 20)

(2) The court was not in a position to emplace the plaintiff in his post as Setiausaha Sulit for purposes of his future entitlements
G as Grade A24 no longer existed. His retirement as Setiausaha Sulit remained but the grade had changed. This court would not and could not order by way of declaration the plaintiff be placed in a grade that did not exist currently in the civil service and the nearest grade N36 applied to the plaintiff for which the
H plaintiff was receiving benefits. (para 22)

Case(s) referred to:

Badrul Ahmad & Ors v. Government of Malaysia & Ors [1986] 1 LNS 23 SC ***(foll)***

Government of Malaysia v. Rohaya Mohd Majzub & Ors [1989] 1 CLJ 147; [1989] 1 CLJ (Rep) 39 SC ***(refd)***
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Legislation referred to:
Federal Constitution, art. 132(2)
Pension Adjustment Act 1980, s. 6

For the plaintiff - Datuk Nchandran (Sri Dev Nair with him); M/s Sri Dev & Naila
For the defendant - Aida Adhha Abu Bakar; AG's Chambers

Reported by Suhainah Wahiduddin

JUDGMENT

Prasad Sandosham Abraham JC:

[1] I heard encl. 1 on 9 December 2009. As counsel for the plaintiff, and the defendant had raised several interesting and important points of law, I adjourned the matter to 15 January 2010 for decision. I sought further clarification on some issues that I needed assistance on, and counsel for both parties appeared before me on 20 January 2010 and submitted on the same and I reserved my decision to 21 January 2010 wherein I dismissed encl. 1 with no order as to costs, and I append my reasons for so doing below.

[2] The plaintiff's application which contains the prayers sought are set out in encl. 1 and I set out the English version of the same:

1. A declaration that the Service Circular No. 9 of 1991 is null and void and is of no effect or application as against the Plaintiff.

2. A declaration that the Service Circular No. 4 of 2002 is null and void and of no effect or application as against the Plaintiff.

3. An order that the Plaintiff be emplaced in his post as Setiausaha Sulit Division 1 for the purposes of his entitlements under the Service Circular No. 9 of 1991 and the Service Circular No. 4 of 2002.

4. An order that the Plaintiff be paid his pension entitlements as per his post prior to his retirement as Setiausaha Sulit Division One.

5. An order that the shortfall in the sum of RM42.50 per month from the 1.11.2002 till the judgment, be paid by the Defendants to the Plaintiff.

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6. An order that the Defendants do pay the Plaintiff, interest at the rate of 8% per annum on the total sum of the shortfall paid by the Defendants to the Plaintiff from the date when the shortfall accrued to the date of full and final payment of the shortfall.

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7. An order that the Defendants do continue paying the Plaintiff his pension entitlements, including the revisions effected to the salary to the rank of the Plaintiff at the time of his retirement.

8. Costs;

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9. Such further or other relief as this Honourable Court may deem fit and proper to grant.

[3] The facts of the plaintiff's service in the Government of Malaysia which are essentially not in dispute are set out below and

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his service with the Government spanned over a period of 31 years. The plaintiff commenced work with the government of Malaysia as a temporary Stenographer on 16 March 1959 at that time with the Federal Establishment Office predecessor to the first defendant with effect from 1 June 1959, the plaintiff was transferred to the

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Attorney General's Chambers to serve in same capacity. On 1 June 1961, the plaintiff was transferred to the Telecommunications Department also in the same capacity. On 22 November 1963, the plaintiff was appointed a probationary Stenographer and continued to be attached to the Telecommunications Department. On

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22 November 1964, the plaintiff was confirmed as a Stenographer and continued service with the Telecommunications Department.

[4] On 22 November 1966, the plaintiff was emplaced in the pensionable establishment as a special grade Stenographer and continued serving with the Telecommunications Department. On

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10 September 1966, the public services commission appointed the plaintiff as acting stenographer, Special Grade, attached to the Telecommunications Head Quarters. The plaintiff was then promoted Stenographer with special grade with effect from

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21 December 1965 (back dated) by the Public Services Commission.

[5] In 1970 the plaintiff opted for the new Clean Wage System as per the Suffian Commission Report and effective 1 February 1971. The plaintiff was paid a special allowance for serving as a personal assistant to the Director of Telecommunications

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Department. On 3 June 1974, the plaintiff was transferred to the

Ministry of Trade and Industry as a Special Grade Stenographer which under the Suffian Scheme came to be known as Setiausaha/ Jurutrengkas Tingkatan Dua. On 1 October 1974, the plaintiff was posted to the Malaysian Trade Commissioner's Office in the same capacity till 11 March 1978.

[6] The plaintiff on 11 March 1978 was released from the position of Setiausaha/Jurutrengkas Tingkatan Kanan and the plaintiff joined the Ministry of Labour and Manpower in the newly designated appointment of Setiausaha Sulit to the Honourable Deputy Minister of Labour and Manpower and the grade that the post carried was A 24. After six months probation, the plaintiff was confirmed in that post until the plaintiff retired on 17 December 1990. The plaintiff served the Government with distinction and the Government of Malaysia acknowledged that fact in its letter of appreciation to the plaintiff, (see exh. M1) encl. 2 and the plaintiff's Service Record (encl. 2 exh. YCK 8). When the plaintiff retired, the plaintiff's last drawn salary was RM2,350 and the grade (Kod Gaji) was A24, Division one.

[7] The position of the plaintiff's appointment as Setiausaha Sulit, was subsequently governed by Surat Pekeliling Bil. 10/1983, which deemed the appointment as an "open appointment" ie, on a temporary basis and whilst an officer served in that post he would be entitled to the pay and perks, the A 24 grade carries (see exh. RNZ2) affidavit lanjutan defendant (encl. 16).

[8] The next important development was the coming into effect of "Pekeliling Perkhidmatan Bil. 9 Tahun 1991 which sought to implement" Perlaksanaan Sistem Saraan Baru Berdasarkan Laporan Jawatankuasa Khas Kabinet Mengenai Gaji Sektor Awam 1991") (SSB). To quote the purpose of the said circular:

> Pekeliling Perkhidmatan ini bertujuan untuk melaksanakan Sistem Saraan Baru yang melibatkan struktur perkhidmatan yang merangkumi skim-skim perkhidmatan, gaji, elaun, kemudahan syarat-syarat perkhidmatan dan faedah persaraan bagi semua anggota lantikan tetap sektor awam mulai 1 Januari 1992.

[9] This was a massive overhaul of the structure of civil service and the effect of this circular, as far as the plaintiff was concerned, was that Grade A 24 was scrapped and the nearest grade in terms of pay and benefits under SSB was N4 (see para 21 encl. 3). Hot

on the heels of SSB came Pekeliling Perkhidmatan Bil. 4 of 2002 (PP/4/2002) which came into effect on 1 November 2002. This was essentially a review of the SSB and its main purposes are to be found in the circular itself ie.

> 1. Pekeliling Perkhidmatan ini bertujuan untuk melaksanakan Sistem Saraan Baru bagi semua anggota tetap Perkhidmatan Awam Persekutuan.
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> Latar Belakang
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> 2. Sistem Saraan Baru telah dilaksanakan semenjak 1 Januari 1992 sebagai langkah strategik untuk meningkatkan keupayaan perkhidmatan awam. Sistem Saraan Baru telah dikaji semula selaras dengan hala tuju semasa perkhidmatan awam dan keperluan persekitaran yang dinamik. Hasil daripada kajian tersebut, Kerajaan telah bersetuju untuk melaksanakan Sistem Saraan Malaysia yang berteraskan kompetensi dalam Pengurusan Sumber Manusia Perkhidmatan Awam. Sistem Saraan Malaysia memperkenalkan Penilaian Tahap Kecekapan berasaskan kompetensi. Ia bertujuan untuk menggalakkan pembangunan diri melalui pembelajaran berterusan serta menggalakkan penguasaan pengetahuan, kemahiran dan kreativiti serta inovasi dalam pelaksanaan tugas.
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> 3. Dengan ini, pelaksanaan Sistem Saraan Malaysia merangkumi pengenalan Penilaian Tahap Kecekapan dalam perkhidmatan awam. Sistem Saraan Malaysia juga telah membuat beberapa penambahbaikan dalam Sistem Saraan Baru seperti pengubahsuaian sistem penilaian prestasi dan Anugerah Perkhidmatan Cemerlang, peningkatan peluang kemajuan kerjaya, pengubahsuaian struktur gaji dan elaun serta penambahbaikan syarat-syarat perkhidmatan. Ini bertujuan melahirkan pekerja berpengetahuan yang dapat meningkatkan keupayaan dan daya saing perkhidmatan awam serta mampu memenuhi ekspektasi pelanggan yang semakin meningkat.

[10] As far as the plaintiff was concerned, despite these circulars coming into effect after the plaintiff's retirement, his grade was now N36 which under the existing salary scheme placed the plaintiff had he been in service in the support group of the civil service. His last drawn salary remains not the grade.

[11] The plaintiff's stand is quite clear. The plaintiff retired as Setiausaha Sulit grade A 24 and the effect of the SSB and 2002 circulars cannot have any effect on the plaintiff and are therefore

void as they only came into force after the plaintiff's retirement. The regrading of the post of Setiausaha Sulit had not only caused the plaintiff to suffer financially but the plaintiff was now as the plaintiff claims has been downgraded to support category when the plaintiff should have been in the Professional and management category of the civil service. The plaintiff claims there is an element of degradability in terms of his status.

[12] The defendants however refute that. The defendants contend that with the regrading of A 24 to N36, ie, nearest salary grade under the new pay scale that was available to the plaintiff, the plaintiff has not suffered in terms of last drawn salary or perks. The defendants argue that the orders sought by the plaintiff if granted would cost the Government dearly and the plaintiff would have to be paid benefits based on a grade that does not now exist.

[13] The plaintiff when coming to know about these discrepancies wrote to the defendants to redress the issue but after several exchange of correspondence and meetings the defendants rejected the plaintiff's position (see encl. 2 exh. M2 and the letter herein).

[14] The main issue here is not with the adjustment of the last drawn salary of the plaintiff but with SSB and 2002 circulars coming into effect after the plaintiff retired, whether they were lawful. Regarding the validity of the two circulars first *per se*, they are valid in my view (see the decision of the Supreme Court in *Badrul Ahmad & Ors v. Government of Malaysia & Ors* [1986] 1 LNS 23 where his Lordship Hashim Yeop A Sani SCJ (as he then was) in the leading judgment of the court said:

> Where is the delegation? The Cabinet Committee system is nowadays normal in the machinery of government - see also de Smith's *Constitutional and Administrative Law* 5th Edition under "Executive Power." The Public services Department is an administrative department of the government charged with the responsibility for the affairs of the civil service. The Assistant Director of the Public services Department might have thought that it was a delegation as stated in his affidavit affirmed on April 8, 1985. But in our view delegation does not arise either from the Cabinet to the Cabinet committee or from the Cabinet Committee to the Director General of the Public Services Department. It is a mere chain of command.

In *Metropolitan Borough and Town Clerk of Lewisham v. Roberts* [1949] 2 KB 608 Bucknill LJ cited with approval the pronouncement of governmental system by Lord Greene in *Carltona Ltd v. Commissioners of Works and Others* [1943] 2 All ER 560 at p. 563:

> In the administration of government in this country the function which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible official of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority and, if for an important matter he selected and official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials.

In Carltona the sole question before the Court of Appeal related to the validity of the requisition order under the Defence (General) Regulations 1939. One of the questions posed was whether the requisition was bad because the persons constituting the requisitioning body (the Commissioner of Works) never brought their minds to bear on the question.

In *Lewisham Borough v. Roberts* [1949] 2 KB 608 the court was concerned with a "re-requisition" order also under the same Defence Regulations but this time by the Ministry of Health. The town Clerk applied to the Minister of Health to re-requisition the whole premises because the tenant of the ground floor refused access to the upper floor which had been requisitioned earlier. G, a general inspector of the Ministry of Health replied to the Town Clerk in an official letter of the Ministry stating that he was directed by the Minister to say that he delegated to the Town Clerk his

functions under the Regulations for the purpose of requisitioning the whole premises. There was no evidence that the Minister had personally instructed G to act on a matter of this kind. By virtue of section 7 of the Emergency Powers (Defence) Act 1939 a document must be deemed to have been made or issued by the Minister of Health until the contrary was proved. It was held that since the contrary was not proved and since **the Minister was entitled to act by an authorised official of his department** and there was no necessity that it should be shown that the Minister had given his mind to the matter personally, no question of delegation arose as between the Minister and G so that the maxim, *delegatus non potest delegare*, did not arise. (Emphasis added).

[15] The next question to be considered, as these circulars are lawful would they be applicable to the plaintiff. I had cause to look at the Pension Adjustment Act 1980 Act 238 and in particular s. 6.

6. Determination of corresponding last drawn salary.

6. (1) The Director General shall determine the corresponding last drawn salary of an officer.

(2) For the purposes of this Act, "corresponding last drawn salary" means, in the case of an officer to whom the current salary scale does not apply by virtue of:

(a) his not having had an opportunity to opt;

(b) his not having opted; or

(c) his not being deemed to have opted,

For the current salary scale, the equivalent salary that the officer would have drawn under the current salary scale prior to death in service or to retirement had he been in service on the implementation of the current salary scale and had it been applied to him.

[16] The Director General of Pension shall determine the last drawn salary for the current salary scale and had it been applied to him, current salary scale is defined as:

"current salary scale" means the latest salary scale which is, on or after the coming into force of this Act, applicable to officers of the public service and employees of statutory and local authorities to whom the revision of salaries made by the Federal Government with effect from 1 January 1976, or any other subsequent revision thereof made by the Federal Government from time to time, is applicable;

[17] The plaintiff's last drawn salary is RM2,350 but what has changed is the grade the post carries ie, N36 and had the plaintiff still been in service, his maximum salary upon retirement would be that under N36. The plaintiff's complaint is that under N36, he has lost the opportunity of higher increment in salary which would have been adjusted according to Pension Adjustment Act 1980, rather than which the plaintiff receives based on N36.

[18] Going back to the Supreme Court decision referred to earlier and bearing in mind art. 132(2) of the Federal Constitution I find the defendants were entitled in law to make the adjustment in the grade of the plaintiff after his retirement to N36 and adjust the plaintiff's pension entitlement accordingly.

[19] I referred also to the same Supreme Court judgment, the facts of which are useful, and this part of the judgment of the court is instructive ie, to quote:

> By virtue of Article 132(2) of the Federal Constitution the conditions of service of persons in the federal public services may be regulated by federal law and subject to the provisions of any such law by the Yang Di-Pertuan Agong. In this regard we are in the same situation as described by Denning LJ (as he then was) in *Lewisham Borough v. Roberts* where he said in regard to the power of requisition.

[20] With regards to the question of readjustment of pay scale and grades, the court would not usurp the position of the defendants in making such policy decision. With reference to the same Supreme Court decision, it was further said that:

> The grievances of the appellants may be summarised as follows. The absorption process from the temporary scheme to the permanent service would in effect amount to a reduction in rank without giving them the opportunity to be heard and therefore unconstitutional. Their argument was that by the absorption process those officers who were Chief Enforcement Inspectors in the temporary or provisional scheme of service were put together in the same scheme of service as the enforcement officers and therefore had the effect of reducing them in rank by placing them together with officers who were previously subordinate to them. Consequent upon being placed together with officers subordinate to them they were deprived of their normal legitimate prospect of promotion.
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> After carefully setting out the facts of the case the learned trial judge concluded that in actual fact the appellants had not lost anything financially as they were put on a salary scale carrying a

higher maximum salary and also placed at a point in accordance with the dates of the first appointment. The learned judge said (at page 21) as follows:

> As I had earlier stated the plaintiffs had not lost anything financially. They were put on a salary scale carrying a higher maximum salary. The dates of their seniority in service, were the dates of their first appointments as Chief Enforcement Inspectors as opposed to the other Enforcement Inspectors whose dates of seniority took effect on 2.12.1974. The plaintiff's period of qualifying service for promotion to Special Grade Enforcement Inspectors were reduced by half.

We agree with the learned judge as we do not think that the facts can be interpreted in any other way.

The complaint of being reduced in rank has no merit. First, a reduction in rank means a reduction in the grade an officer is holding which is a form of penalty, a penalty in the sense that something beneficial to him is taken away. See also *Munusamy v. Public Services Commission* [1967] 1 MLJ 199. On the facts as alluded to earlier we do not agree that there is reduction in rank. In fact the facts of this case are very much similar to the Public Service Tribunal Reference No. 1/78 (*Encik Rabu bin Abdul Ghani v. PSDM* Public Service Tribunal Reference No 1/78). That case concerned an applicant to the Public Service Tribunal who had earlier been promoted as a storekeeper. Subsequently the government decided to regrade and restructure the salary scale of storekeepers. The applicant there contended that he should not have been "demoted" to a timescale post (the new post). The chairman of the Tribunal, Abdul Hamid J (as he then was) said:

> Our answer to it is that there is no departure or deviation because the effect of the regrading and restructuring although it places the Applicant back into the Timescale nevertheless does not entail any loss in salary. In fact he enjoys a higher maximum. There is also no loss in seniority among themselves despite the loss in designation. As to the prospect of promotion we feel that there may be such reduction because the Applicant is placed on a larger and more competitive group but there is no loss in the opportunity to be promoted.

Secondly the allegation that the fact that the appellants were placed together with their previous subordinates would amount to reduction in rank is with respect misconceived and selfish. Since they have not lost financially or in seniority or in status the grievance is completely unjustified being directed solely to the presence of officers who were previously subordinate to them in the same scheme of service.

Finally, have they lost in terms of prospects of promotion? The facts show and the learned judge found that to qualify for promotion to the post of Enforcement Inspector Special Grade, the new scheme requires a Timescale Enforcement Inspector to serve at least six years as a Timescale Enforcement Inspector and to be confirmed in his post, and to pass the necessary examinations specified in the new scheme. We also take notice that the qualifying period of six years was in fact reduced in the case of the plaintiffs (ie, those who were formerly Chief Enforcement Inspectors) to three years. For the plaintiffs, the dates of their seniority in service were to begin from the dates they were appointed as Chief Enforcement Inspectors, whereas for those who were Enforcement Inspectors in the *ad hoc* scheme of service, their seniority would begin from the date of the coming into force of the new scheme of service ie, with effect from December 2, 1974. When the new permanent scheme of service came into force on December 2, 1974, the scheme of service for Special Grade Enforcement Inspectors were created, but no such post was made available to the Ministry of Trade and Industry until October 1, 1976 ("exhibit BA-3," paragraph 13.1, to the affidavit of Badrul bin Ahmad affirmed on November 27, 1980), when the Public Services Department and the Treasury approved the establishments of 12 posts of Special Grade Enforcement Inspectors. Upon the establishment and availability of these posts, the Promotion Board in the Ministry of Trade and Industry took immediate action to appoint all the 10 former Chief Enforcement Inspectors (including the plaintiffs) to act as Special Grade Enforcement Inspectors on November 1, 1977, and two of them who were confirmed as Enforcement Inspectors were paid acting allowances, while the rest who were not so confirmed were paid charge allowances. Thus it is no wonder that the learned judge concluded (pg. 22) that the plaintiffs were in fact put in a more advantageous position. He said:

> The plaintiffs, therefore, were put in a more advantageous position than the former Enforcement Inspectors when it came to chances of promotion to the Special Grade Enforcement Inspectors.

[21] I also refer to the decision of the Supreme Court in *Government of Malaysia v. Rohaya Mohd Majzub & Ors* [1989] 1 CLJ 147; [1989] 1 CLJ (Rep) 39 SC where Hashim Yeop A Sani, Attorney General Chief Justice (as he then was) said:

> Finally the respondents came to the court asking for declarations that they be given the B3 salary scale of the Cabinet Committee Report with effect from the date of employment and that they be given the B3 salary scale of the Cabinet Committee Report with effect from the date of employment and that they are entitled to

the relief in the Public Services Tribunal award. Issuing of the declaration is discretionary and in a case like this where the claims concerned conditions of service and salary scales in the government service, the court should not rush into making a declaration. The court should not usurp the functions of the tribunal or the government in matters of salary scales and conditions of service

[22] Let me now turn to the prayers sought by the plaintiff. In view of what I had I alluded to earlier in my judgment Prayers 1 & 2 of encl. 1 are unsustainable. As to prayers 3 & 4, the court is not in a position to emplace the plaintiff in his post as Setiausaha Sulit 1 for purposes of his future entitlements as grade A 24 no longer exists. His retirement as Setiausaha Sulit remains but it's the grade that has changed and this court will not and cannot order by way of declaration the plaintiff be placed in a grade that does not now exist in the civil service and the nearest grade N36, applies to the plaintiff for which the plaintiff is receiving benefits.

[23] Whilst I am constrained by the law to reach this decision, that I have reached in this case, the court feels sympathy for the plaintiff especially in the light of his distinguished and commendable service towards the Government. Pensioners are a diminishing race. They have given the best years of their lives in the service of the country. And now in their twilight years we should not deprive the pensioners as far as possible of their benefits including their status of having retired as a division one officer.

[24] Perhaps it will not be out of place for policy implementers to be reminded that they would one day be in the same position as that of the plaintiff. The position of the plaintiff and others like him which is obviously an anomaly should be reviewed, if at all possible.

[25] With regret, I dismissed the plaintiff's application with no order as to costs.